





1 Construction,<sup>5</sup> and Rep. Murphy reportedly owns an interest in the company that is worth  
2 between \$1,000,001 and \$5,000,000.<sup>6</sup>

3 The Complaint alleges that those contributions from Thomas Murphy and Coastal  
4 Construction evidence coordination between the Committee and FSMC because those  
5 contributors are closely connected to Rep. Murphy.<sup>7</sup> The Complaint focuses on the financial ties  
6 that exist between Rep. Murphy and the contributors due to Rep. Murphy's ownership interest in  
7 Coastal Construction.<sup>8</sup>

8 While the Respondents admit that the contributions were made, they deny that any  
9 coordination has occurred between FSMC and the Committee.<sup>9</sup> In support, Thomas Murphy  
10 submitted a declaration swearing that he alone made the decision to contribute his personal  
11 funds, and that he made the decision to make a contribution from Coastal Construction in his  
12 capacity as Chairman and CEO, in both cases independent of and without consultation with or  
13 the knowledge of Rep. Murphy or his Committee.<sup>10</sup> Thomas Murphy further avers that he has  
14 not otherwise had any involvement with FSMC "regarding any communications or 'independent

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<sup>5</sup> See Response of Rep. Murphy, Thomas Murphy, and Coastal Construction ("Murphy Resp."), Decl. of Thomas Murphy, Jr., ¶ 1 (July 18, 2016).

<sup>6</sup> 2015 Congressional Financial Disclosure Report, Rep. Patrick Murphy, Filing ID #10010493 (May 16, 2016); see also Compl. at 2. As a privately held company, Coastal Construction's worth is not publically available. However, news reports on the value of Coastal Construction's contracts suggest that those contracts are worth anywhere from \$250 million to \$2.5 billion. See *Company Overview of Coastal Construction of South Florida, Inc.*, BLOOMBERG, accessed at <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=11128716> (estimating the value of Coastal Construction's contracts to be more than \$250 million as of June 3, 2015); Scott Judy, *Coastal Construction Rides High on South Florida Surge*, ENR SOUTHEAST, accessed at <http://www.enr.com/articles/11879-coastal-construction-rides-high-on-south-florida-surge> (June 25, 2014) (reporting on Thomas Murphy's estimation that Coastal Construction's contracts during 2014 were valued at just over \$2.5 billion).

<sup>7</sup> Compl. at 1-2.

<sup>8</sup> See *id.*

<sup>9</sup> FSMC Resp. at 2 (June 23, 2016); Murphy Resp. at 2-3. The Committee did not respond to the Complaint.

<sup>10</sup> Murphy Resp., Decl. of Thomas Murphy, Jr. ¶¶ 5-6.

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1 expenditures' that they have made or may or may not make in the future."<sup>11</sup> Respondents also  
2 state that, at the time they filed their responses, FSMC had not yet made any public  
3 communications in support of Rep. Murphy.<sup>12</sup> A review of FSMC's FEC filings supports this  
4 assertion. After the responses were filed, however, FSMC filed numerous independent  
5 expenditure reports disclosing independent expenditures in support of Rep. Murphy.<sup>13</sup>

### 6 III. LEGAL ANALYSIS

7 The Act prohibits any person from making, and any candidate or committee from  
8 knowingly accepting, contributions in excess of the limits stated in 52 U.S.C. § 30116.<sup>14</sup> In  
9 addition, IEOPCs are prohibited from making contributions to federal candidates,<sup>15</sup> and  
10 candidates and their authorized committees are prohibited from accepting "soft money"  
11 contributions not subject to the limits and prohibitions of the Act.<sup>16</sup>

12 For purposes of the Act, coordinated means made in cooperation, consultation or concert  
13 with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a  
14 political party committee.<sup>17</sup> Any expenditure that is coordinated is an in-kind contribution to the

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<sup>11</sup> *Id.* ¶ 4.

<sup>12</sup> FSMC Resp. at 2; Murphy Resp. at 3.

<sup>13</sup> See Floridians for a Strong Middle Class Electronic Filings. See, e.g., 48 Hour Independent Expenditure Reports (Aug. 4, 2016 & Oct. 11, 2016).

<sup>14</sup> 52 U.S.C. § 30116(a), (f).

<sup>15</sup> See 52 U.S.C. § 30118(a) (prohibition on corporate contributions); 11 C.F.R. § 114.2(a) (same); Advisory Op. 2010-11 (Commonsense Ten).

<sup>16</sup> See 52 U.S.C. § 30125(e)(1).

<sup>17</sup> 11 C.F.R. § 109.20(a); see also 52 U.S.C. § 30116(a)(7)(B)(i).

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1 candidate or committee with which it is coordinated.<sup>18</sup> An expenditure for a communication is  
2 coordinated when the communication:

- 3 (1) Is paid for, in whole or in part, by a person other than that  
4 candidate, authorized committee, or political party committee;  
5 (2) Satisfies at least one of the content standards<sup>19</sup> in paragraph  
6 (c) of [§ 109.21]; and  
7 (3) Satisfies at least one of the conduct standards<sup>20</sup> in paragraph  
8 (d) of [§ 109.21].<sup>21</sup>

9 While the Complaint alleges coordination between the Committee and FSMC, it does not  
10 identify any specific communications or other expenditures that were supposedly coordinated.  
11 In fact, the available information indicates that FSMC had not yet made any public  
12 communications when the Complaint was filed. While FSMC paid for independent expenditures  
13 in support of Murphy after the Complaint was filed, the available information regarding those  
14 expenditures does not suggest any violations of the Act.

15 The payments for FSMC's advertisements were disclosed by FSMC as independent  
16 expenditures in support of Rep. Murphy, so they appear to satisfy the payment and content

<sup>18</sup> See 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

<sup>19</sup> The content standard is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication, in relevant part, that refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the candidate's primary election; or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5).

<sup>20</sup> The six types of conduct that satisfy the conduct standard are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. 11 C.F.R. § 109.21(d).

<sup>21</sup> 11 C.F.R. § 109.21(a).

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1 prongs of the Commission's coordination test,<sup>22</sup> but the factual record does not support a  
2 conclusion that the conduct prong may have been satisfied.<sup>23</sup> The fact that Thomas Murphy and  
3 Coastal Construction contributed to FSMC, and that Rep. Murphy has an ownership interest in  
4 Coastal Construction, without more, does not appear to satisfy any of the conduct standards.<sup>24</sup>  
5 This conclusion is further supported by Thomas Murphy's declaration that Rep. Murphy and the  
6 Committee were not involved in his decisions to contribute and that he has not otherwise had any  
7 involvement with FSMC regarding any communications.<sup>25</sup>

8 Accordingly, the available information does not support the allegation of coordinated  
9 activity.<sup>26</sup> We recommend that the Commission find no reason to believe that the Respondents  
10 violated the Act and close the file.<sup>27</sup>

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<sup>22</sup> See 52 U.S.C. § 30101(17) ("independent expenditure" defined as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized committee, or their agents); 11 C.F.R. § 109.21(c)(3) (a communication will satisfy the content standard if it expressly advocates for the election or defeat of a clearly identified candidate for Federal office).

<sup>23</sup> See 11 C.F.R. § 109.21(d).

<sup>24</sup> See *id.*, F&LA at 5-9, MUR 6668 (Chen) (finding no reason to believe where the brother of a federal candidate provided \$765,000 of the \$1,115,000 received by an IEOPC that supported the candidate.)

<sup>25</sup> Murphy Resp., Decl. of Thomas Murphy, Jr. ¶¶ 3-6.

<sup>26</sup> To the extent the Complaint can be construed as alleging that the Respondents coordinated non-communicative expenditures, FSMC has disclosed a variety of such disbursements. See 52 U.S.C. § 30116(a)(7)(B)(i). See also 11 C.F.R. § 109.20(b) (any expenditure that is coordinated within the meaning of Section 109.20(a), but that is not made for a coordinated communication under 11 CFR 109.21, is an in-kind contribution to the candidate with whom it was coordinated and must be reported as an expenditure made by that candidate). The Complaint nonetheless cites no specific disbursement made by FSMC that was allegedly coordinated (and we are aware of none), but instead relies entirely on the fact that Thomas Murphy and Coastal Construction made contributions to FSMC and Rep. Murphy owns an interest in Coastal Construction, which does not provide adequate information to make a reasonable inference that the Act has been violated.

<sup>27</sup> As noted, Rep. Murphy owns an interest in Coastal Construction. Though not alleged, Rep. Murphy's ownership interest raises the issue of whether the \$300,000 Coastal Construction contributed to FSMC implicates the Act's prohibition on federal candidates directly or indirectly establishing, financing, maintaining or controlling entities that solicit, receive, or spend funds in connection with a federal election that are not subject to the Act's limitations and source prohibitions. See 52 U.S.C. § 30125(e)(1)(A). However, the \$300,000 contribution was only a small fraction of the \$2,440,150 that FSMC received, the available information suggests that Rep. Murphy owns a relatively small interest in Coastal Construction, and there are no facts in the record to suggest that Rep. Murphy

